

§4-1 Districts, generally. For election, taxation, education, city, county, and all other purposes, the State shall be divided into the following districts; provided that the establishment of election districts shall be exclusively governed by article IV of the constitution of the State of Hawaii and chapter 25:

(1) The island and county of Hawaii shall be divided into nine districts as follows:

(A) Puna, to be styled the Puna district;

(B) From the Hakalau stream to the boundary of South Hilo and Puna, to be styled the South Hilo district;

(C) From the boundary of Hamakua and North Hilo to the Hakalau stream, to be styled the North Hilo district;

(D) Hamakua, to be styled the Hamakua district;

(E) North Kohala, to be styled the North Kohala district;

(F) South Kohala, to be styled the South Kohala district;

(G) North Kona, to be styled the North Kona district;

(H) South Kona, to be styled the South Kona district; and

(I) Kau, to be styled the Kau district.

(2) The islands of Maui, Molokai, Lanai, and Kahoolawe and the counties of Maui and Kalawao shall be divided into seven districts as follows:

(A) Kahikinui, Kaupo, Kipahulu, Hana, and Koolau, to be styled the Hana district;

(B) Hamakualoa, Hamakuapoko, portion of Kula, and Honuaula, the western boundary being a line starting from the sea at Kapukaulua on the boundary between the ahupuaas of Haliimaile and Wailuku, thence running inland following the boundary to the mauka side of the Lowrie ditch, thence following the mauka side of the ditch and its projected extension to the Waiakoa gulch which is the boundary between the ahupuaas of Pulehunui and Waiakoa, thence down along the boundary to the mauka boundary of the Waiakoa Homesteads (makai section), thence along the boundary to the ahupuaa of Kaonoulou, thence across the ahupuaa of Kaonoulou to the mauka boundary of the Waiohuli-Keokea Beach Homesteads, thence along the boundary to the mauka boundary of the Kamaole Homesteads, thence along the boundary and the extension thereof to the north boundary of the ahupuaa of Paeahu, thence along the boundary to the sea, and including the island of Kahoolawe, to be styled the Makawao district;

(C) All that portion of central Maui lying east of a line along the boundary of the ahupuaas of Kahakuloa and Honokohau to the peak of Eke crater, thence along the ridge of mountains and down the bottom of Manawainui gulch to the sea, and west of the boundary of Makawao district, to be styled Wailuku district;

(D) All that portion of Maui lying west of Wailuku district, to be styled the Lahaina district;

(E) The island of Molokai, except that portion of the island known as Kalaupapa, Kalawao, and Waikolu and commonly known or designated as the Settlement for Hansen's disease sufferers, to be styled the Molokai district;

(F) All that portion of the island of Molokai known as Kalaupapa, Kalawao, and Waikolu forming the county of Kalawao, to be styled the Kalawao district; and

(G) The island of Lanai, to be styled the Lanai district.

(3) For judicial purposes, the island of Oahu shall be divided into seven districts as follows:

(A) From Makapuu Head in Maunaloa to Moanalua inclusive, and the islands not included in any other district, to be styled the Honolulu district;

(B) Ewa, excluding Waikakalaua, Waipio Acres, and Mililani Town, to be styled the Ewa district;

(C) Waianae excluding Waianae Uka, to be styled the Waianae district;

(D) From Kaena point to and including Waialeale Stream excluding Wahiawa, hereinafter described, to be styled the Waialua district;

(E) From Waialeale Stream to Lae o ka Oio, to be styled the Koolauloa district;

(F) From Lae o ka Oio to Makapuu Head in Waimanalo, to be styled the Koolaupoko district;

(G) Wahiawa and Waianae Uka, including Waikakalaua, Waipio Acres, and Mililani Town, lying between Ewa and Waialua districts and more particularly described in the following manner: Beginning at Puu Kaaumakua in the Koolau range and running to and along the south boundary of Waianae Uka (which is also the south boundary of Schofield Barracks Military Reservation) to Puu Hapapa in the Waianae range; thence continuing along Schofield Barracks Military Reservation northerly along the Waianae range to Puu Kaala, easterly along Mokuleia down ridge to Puu Pane, continuing to Maili Trig. station, and down ridge to Haleauau stream and down Haleauau stream to Kaukonahua gulch, and easterly along the gulch to the west boundary of the ahupuaa of Wahiawa; thence leaving Schofield Barracks Military Reservation and following up and

along the west and north boundaries of the ahupuaa of Wahiawa to the Koolau range; thence along the Koolau range to the beginning; to be styled the Wahiawa district.

(4) For all purposes except for judicial, the island of Oahu shall be divided into seven districts as follows:

(A) From Makapuu Head in Maunaloa to Moanalua inclusive, and the islands not included in any other district, to be styled the Honolulu district;

(B) Ewa, to be styled the Ewa district;

(C) Waianae excluding Waianae Uka, to be styled the Waianae district;

(D) From Kaena point to and including the ahupuaa of Waimea excluding Wahiawa, hereinafter described, to be styled the Waialua district;

(E) From Waimea to Lae o ka Oio, to be styled the Koolauloa district;

(F) From Lae o ka Oio to Makapuu Head in Waimanalo, to be styled the Koolaupoko district;

(G) Wahiawa and Waianae Uka, lying between Ewa and Waialua districts and more particularly described in the following manner: Beginning at Puu Kaaumakua in the Koolau range and running to and along the south boundary of Waianae Uka (which is also the south boundary of Schofield Barracks Military Reservation) to Puu Hapapa in the Waianae range; thence continuing along Schofield Barracks Military Reservation northerly along the Waianae range to Puu Kaala, easterly along Mokuleia down ridge to Puu Pane, continuing to Maili Trig. station, and down ridge to Haleauau stream and down Haleauau stream to Kaukonahua gulch, and easterly along the gulch to the west boundary of the ahupuaa of Wahiawa; thence leaving Schofield Barracks Military Reservation and following up and along the west and north boundaries of the ahupuaa of Wahiawa to the Koolau range; thence along the Koolau range to the beginning; to be styled the Wahiawa district.

(5) The islands of Kauai, Niihau, Kaula, and county of Kauai, shall be divided into five districts as follows:

(A) From Puanaaiea point to the ili of Eleele, including the islands of Niihau and Kaula, to be styled the Waimea district;

(B) From and including the ili of Eleele to and including Mahaulepu, to be styled the Koloa district;

(C) From and including Kipu to the northerly bank of the north fork and the main Wailua river, to be styled the Lihue district;

(D) From the northerly bank of the north fork and the main Wailua river to Kealaakaiole, to be styled the Kawaihau district; and

(E) From and including Kealaakaiole to Puanaaiea point to be styled the Hanalei district. [CC 1859, §498; am L 1878, c 24; am L 1880, c 11; am L 1886, c 44; am L 1887, c 37; am imp L 1890, cc 23, 58; am imp L 1893-4, c 86; superseded by L 1909, c 84, §1; am L 1913, c 34, §1 and c 112, §1; am L 1915, c 52, §1; am L 1921, c 24, §1; RL 1925, §144; am L 1925, c 13, §1; am L 1932 2d, c 68, §§1, 2; RL 1935, §7620; am L 1939, c 35, §1; RL 1945, §151; RL 1955, pt of §10-1; am L 1955, c 191, §1(a); am L 1959, c 6, pt of §1; HRS §4-1; am L 1988, c 245, §2; am L 1989, c 36, §2; am L 1991, c 15, §1; am L 1996, c 179, §1]

Cross References

Land districts, see §171-9.

Reapportionment, see chapter 25.

School board districts, see §13-1.

Statistical boundaries, see §26-18.

Tax districts, see §231-2.

Case Notes

State tax maps could not be used to establish venue in DUI prosecution where maps did not represent legislatively authorized schematics of official district boundaries for non-taxation purposes. 80 H. 291, 909 P.2d 1106.

Honolulu and Ewa boundary described in paragraph (3) not inherently ambiguous; can be proved through testimony of reputation in the community and is capable of accurate and ready determination by sources whose accuracy cannot reasonably be questioned. 80 H. 297, 909 P.2d 1112.

§8-1 Holidays designated. The following days of each year are set apart and established as state holidays:

The first day in January, New Year's Day;

The third Monday in January, Dr. Martin Luther King, Jr., Day;

The third Monday in February, Presidents' Day;

The twenty-sixth day in March, Prince Jonah Kuhio Kalanianaʻole Day;

The Friday preceding Easter Sunday, Good Friday;

The last Monday in May, Memorial Day;

The eleventh day in June, King Kamehameha I Day;

The fourth day in July, Independence Day;

The third Friday in August, Statehood Day;

The first Monday in September, Labor Day;

The eleventh day in November, Veterans' Day;

The fourth Thursday in November, Thanksgiving Day;

The twenty-fifth day in December, Christmas Day;

All election days, except primary and special election days, in the county wherein the election is held;

Any day designated by proclamation by the President of the United States or by the governor as a holiday. [L 1896, c 66, §1; am L 1903, c 55, §1; am L 1911, c 167, §1; am L 1915, c 20, §1; am L 1919, c 54, §1; RL 1925, pt of §146; RL 1935, pt of §21; am L 1941, c 132, pt of §1; RL 1945, pt of §21; am L 1945, JR 8, §1; am L 1949, JR 15, §1; am L 1953, c 278, pt of §10; am L 1955, c 9, §1; RL 1955, pt of §1-43; am L 1961, c 116, pt of §1; am L 1965, c 162, §1; HRS §8-1; am L 1969, c 156, §1; am L 1971, c 21, §2; am L 1976, c 220, §2; am L 1978, c 205, §2; am L 1980, c 11, §1; am L 1988, c 220, §1; am L 2001, c 65, §1]

Cross References

Computation of time, see §1-29.

Rules of Court

Computation of time, see HRAP rule 26(a); HRCPP rule 6(a); HRPP rule 45(a).

Attorney General Opinions

When federal holiday is state holiday. Att. Gen. Op. 85-9.

Case Notes

See also note to §1-29.

Provision declaring Good Friday as state holiday does not violate First Amendment establishment clause of U.S. Constitution. 932 F.2d 765.

Cited: 17 H. 19, 22.

[§8-1.5] Discoverers' Day. The second Monday in October shall be known as Discoverers' Day, in recognition of the Polynesian discoverers of the Hawaiian Islands, provided that this day is not and shall not be construed to be a state holiday. [L 1988, c 220, §4]

§8-2 Observance of holidays falling on Sundays and Saturdays. If any of the State's legal holidays fall on Sunday, the following Monday shall be observed as a holiday. If the day falls on Saturday, the preceding Friday shall be observed as a holiday. [L 1923, c 151, §1; RL 1925, pt of §146; RL 1935, pt of §21; am L 1941, c 132, pt of §1; am L 1953, c 274, pt of §10; RL 1955, pt of §1-43; am L 1961, c 116, pt of §1; HRS §8-2; am L 1968, c 39, §2; am L 1969, c 156, §2; am L 1976, c 54, §1]

Attorney General Opinions

When a national holiday falls on Saturday, the Saturday and preceding Friday are considered holidays. Att. Gen. Op. 64-1.

PART I. ORGANIZATION, GENERALLY

§26-1 Office of the lieutenant governor. (a) Except as otherwise provided by law, the lieutenant governor is designated the secretary of state for intergovernmental relations and shall perform the duties and functions heretofore exercised by the secretary of Hawaii. The duties and functions shall include, but not be limited to, recordation of all legislative and gubernatorial acts, certification of state documents, and maintenance of an official file of rules adopted by state departments as provided in chapter 91. The lieutenant governor may employ staff as necessary without regard to chapter 76.

(b) The lieutenant governor, with the approval of the governor, may designate some other officer of the government of the State to authenticate documents on behalf of the lieutenant governor during the lieutenant governor's temporary absence outside the State or during the lieutenant governor's illness whenever the documents require the signature of the lieutenant governor. The person shall affix the person's own signature to the document with the words, "for the lieutenant governor" following and the signature shall be deemed to satisfy the requirement of the lieutenant governor's signature on the document. The designation and approval shall be in writing and shall be filed in the office of the governor and a copy thereof, certified by the governor, shall be filed with the public archives. The person so designated shall serve without additional compensation and the lieutenant governor shall be responsible and liable on the lieutenant governor's official bond for all acts done by the person so designated in the performance of the duties on behalf of the lieutenant governor.

(c) Nothing in this section shall be construed to authorize the person to exercise and discharge the powers and duties of the office of the governor as provided by the first paragraph of Article V, section 4, of the Constitution of the State. The person shall not be authorized to exercise any powers whenever a successor to the lieutenant governor assumes the duties of the lieutenant governor pursuant to Article V, section 4, of the Constitution.

(d) In addition to the functions and duties provided by law, the lieutenant governor shall assume administrative responsibility for the office of information practices.

(e) The governor shall identify and direct other duties as necessary to the lieutenant governor. [L Sp 1959 2d, c 1, §9; am L 1963, c 30, §1; am L 1965, c 96, §10; Supp, §14A-8; HRS §26-1; am L 1981, c 82, §5; gen ch 1985; am L 1987, c 213, §1; am L

1995, c 151, §2; am L Sp 1995, c 27, §§9, 15; am L 1998, c 137, §3; am L 1999, c 141, §3; am L 2000, c 253, §150; am L 2005, c 147, §1]

Note

Employees of the office of the lieutenant governor subject to chapters 76 and 77 to retain civil service status. L 1987, c 213, §3.

§26-2 Order of succession to offices of governor and lieutenant governor. (a) When the office of lieutenant governor is vacant by reason of the lieutenant governor's becoming governor, or the lieutenant governor's failure to qualify, or the lieutenant governor's removal from office, death, resignation, or otherwise, the powers and duties of the office of lieutenant governor shall devolve upon the president of the senate; or, if there is none or upon the president's failure to resign promptly from all legislative offices held by the president, then upon the speaker of the house of representatives; or if there is none or upon the speaker's failure to resign promptly from all legislative offices held by the speaker, then upon the attorney general, the director of finance, the comptroller, the director of taxation, and the director of human resources development in the order named; provided that any officer upon whom the powers and duties of the office of lieutenant governor devolve may decline the powers and duties without the officer's resignation from the office by virtue of the holding of which the officer qualifies to act as lieutenant governor, in which event the powers and duties will devolve upon the next officer listed in the order of succession.

(b) When the lieutenant governor is temporarily absent from the State or is temporarily disabled, the powers and duties of the office of the lieutenant governor shall devolve upon the foregoing officers, other than the president of the senate and the speaker of the house, in the order named.

(c) The powers and duties of any officer acting as lieutenant governor under this section shall include the powers and duties of the office of governor when that office is vacant, or when the governor is absent from the State or is unable to exercise and discharge the powers and duties of the governor's office, in addition to the other powers and duties of the lieutenant governor.

No person other than the elected governor or lieutenant governor shall become governor, provision being made by this section only for an acting governor.

(d) An officer succeeding to the powers and duties of the lieutenant governor, under subsection (b) of this section, may designate an officer in the office of the lieutenant

governor to perform any or all functions other than those pertaining to the office of governor.

(e) During the period that any officer, under this section is exercising the powers and performing the duties of the office of governor or lieutenant governor by reason of a permanent vacancy therein, and not otherwise, the officer shall receive the compensation and perquisites of the governor or lieutenant governor, as the case may be.

(f) In a case covered by subsection (a), the taking of the oath of office by an officer, other than a legislative officer required to resign under subsection (a), shall be held to constitute the officer's resignation from the office by virtue of the holding of which the officer qualifies to act as lieutenant governor.

(g) No officer shall act as governor or lieutenant governor under subsection (a) or (b) of this section, unless the officer is eligible to the office of governor under the constitution. No officer other than a legislative officer shall act as governor or lieutenant governor under this section unless the officer has been appointed and confirmed prior to the time the powers and duties of the office of governor or of lieutenant governor devolve upon the officer. No officer shall act as governor or lieutenant governor under this section if the officer is under impeachment at the time the powers and duties of the office of governor or lieutenant governor devolve upon the officer. [L 1965, c 262, §1; Supp, §14A-8.5; HRS §26-2; gen ch 1985; am L 1994, c 56, §21]

Case Notes

Section provides order of succession that applies only after respective officers have properly been elected to public office; it does not relieve prospective candidate from compliance with Hawaii constitution, article V, §2 during the qualification and nomination process. 81 H. 230, 915 P.2d 704.

PART III. SALARIES, CERTAIN STATE OFFICERS

§26-51 Governor; lieutenant governor. *[This section supersedes the section printed in the HRS.]* Effective at noon on December 4, 2006, the salaries of the governor and the lieutenant governor shall be as last recommended by the executive salary commission. Effective July 1, 2007, and every six years thereafter, the salaries of the governor and lieutenant governor shall be as last recommended by the commission on salaries pursuant to section 26-56, unless rejected by the legislature. [L 1959, c 273, §3;

am L 1962, c 28, §23; am L 1965, c 223, pt of §5; Supp, §4A-1; HRS §26-51; am L 1969, c 127, §1; am L 1975, c 58, §5; am L 1982, c 129, §1(1); am L 1986, c 128, §1(1); am L 1989, c 329, §1(1); am L 2003, c 122, §2; am L 2006, c 299, §2]

PART IV. PROHIBITED ACTIVITIES--REPEALED

§§76-91, 92 REPEALED. L 2001, c 123, §2.

§128-20 Political activity prohibited. No organization for civil defense established under the authority of this chapter shall participate in any form of political activity, nor shall it be employed directly or indirectly for political purposes. [L 1951, c 268, pt of §2; RL 1955, §359-19; HRS §128-20]

§235-7 Other provisions as to gross income, adjusted gross income, and taxable income. (a) There shall be excluded from gross income, adjusted gross income, and taxable income:

(1) Income not subject to taxation by the State under the Constitution and laws of the United States;

(2) Rights, benefits, and other income exempted from taxation by section 88-91, having to do with the state retirement system, and the rights, benefits, and other income, comparable to the rights, benefits, and other income exempted by section 88-91, under any other public retirement system;

(3) Any compensation received in the form of a pension for past services;

(4) Compensation paid to a patient affected with Hansen's disease employed by the State or the United States in any hospital, settlement, or place for the treatment of Hansen's disease;

(5) Except as otherwise expressly provided, payments made by the United States or this State, under an act of Congress or a law of this State, which by express provision or administrative regulation or interpretation are exempt from both the normal and surtaxes of the United States, even though not so exempted by the Internal Revenue Code itself;

(6) Any income expressly exempted or excluded from the measure of the tax imposed by this chapter by any other law of the State, it being the intent of this chapter not to repeal or supersede any such express exemption or exclusion;

(7) Income received by each member of the reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States of America, and the Hawaii national guard as compensation for performance of duty, equivalent to pay received for forty-eight drills (equivalent of twelve weekends) and fifteen days of annual duty, at an:

(A) E-1 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2004;

(B) E-2 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2005;

(C) E-3 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2006;

(D) E-4 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2007; and

(E) E-5 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2008;

(8) Income derived from the operation of ships or aircraft if the income is exempt under the Internal Revenue Code pursuant to the provisions of an income tax treaty or agreement entered into by and between the United States and a foreign country, provided that the tax laws of the local governments of that country reciprocally exempt from the application of all of their net income taxes, the income derived from the operation of ships or aircraft that are documented or registered under the laws of the United States;

(9) The value of legal services provided by a prepaid legal service plan to a taxpayer, the taxpayer's spouse, and the taxpayer's dependents;

(10) Amounts paid, directly or indirectly, by a prepaid legal service plan to a taxpayer as payment or reimbursement for the provision of legal services to the taxpayer, the taxpayer's spouse, and the taxpayer's dependents;

(11) Contributions by an employer to a prepaid legal service plan for compensation (through insurance or otherwise) to the employer's employees for the costs of legal services incurred by the employer's employees, their spouses, and their dependents; and

(12) Amounts received in the form of a monthly surcharge by a utility acting on behalf of an affected utility under section 269-16.3 shall not be gross income, adjusted gross income, or taxable income for the acting utility under this chapter. Any amounts retained by the acting utility for collection or other costs shall not be included in this exemption.

(b) There shall be included in gross income, adjusted gross income, and taxable income: (1) unless excluded by this chapter relating to the uniformed services of the United States, cost-of-living allowances and other payments exempted by section 912 of the Internal Revenue Code, but section 119 of the Internal Revenue Code nevertheless shall apply; (2) unless expressly exempted or excluded as provided by subsection (a)(6), interest on the obligations of a State or a political subdivision thereof.

(c) The deductions of or based on dividends paid or received, allowed to a corporation under chapter 1, subchapter B, Part VIII of the Internal Revenue Code, shall not be allowed. In lieu thereof there shall be allowed as a deduction the entire amount of dividends received by any corporation upon the shares of stock of a national banking association, qualifying dividends, as defined in section 243(b) of the Internal Revenue Code, received by members of an affiliated group, or dividends received by a small business investment company operating under the Small Business Investment Act of 1958 (Public Law 85-699) upon shares of stock qualifying under paragraph (3), seventy per cent of the amount received by any corporation as dividends:

(1) Upon the shares of stock of another corporation, if at the date of payment of the dividend at least ninety-five per cent of the other corporation's capital stock is owned by one or more corporations doing business in this State and if the other corporation is subjected to an income tax in another jurisdiction (but subjection to federal tax does not constitute subjection to income tax in another jurisdiction);

(2) Upon the shares of stock of a bank or insurance company organized and doing business under the laws of the State;

(3) Upon the shares of stock of another corporation, if at least fifteen per cent of the latter corporation's business, for the taxable year of the latter corporation preceding the payment of the dividend, has been attributed to this State.

However, except for national bank dividends, the deductions under this subsection are not allowed when they would not have been allowed under section 243 of the Internal Revenue Code, as amended by Public Law 85-866, by reason of subsections (b) and (c) of section 246 of the Internal Revenue Code. For the purposes of this subsection fifteen per cent of a corporation's business shall be deemed to have been attributed to this State if fifteen per cent or more of the entire gross income of the corporation as defined in this chapter (which for the purposes of this subsection shall be computed without regard to source in the State and shall include income not taxable by reason of the fact that it is from property not owned in the State or from a trade or business not carried on in the State in whole or in part), under section 235-5 and the other provisions of this chapter, shall have been attributed to the State and subjected to assessment of the taxable income therefrom (including the determination of the resulting net loss, if any).

(d) (1) For taxable years ending before January 1, 1967, the net operating loss deductions allowed as carrybacks and carryovers by the Internal Revenue Code shall not be allowed. In lieu thereof the net operating loss deduction shall consist of the excess of

the deductions allowed by this chapter over the gross income, computed with the modifications specified in paragraphs (1) to (4) of section 172(d) of the Internal Revenue Code, and with the further modification stated in paragraph (3) hereof; and shall be allowed as a deduction in computing the taxable income of the taxpayer for the succeeding taxable year;

(2) (A) With respect to net operating loss deductions resulting from net operating losses for taxable years ending after December 31, 1966, the net operating loss deduction provisions of the Internal Revenue Code shall apply; provided that there shall be no net operating loss deduction carried back to any taxable year ending prior to January 1, 1967;

(B) In the case of a taxable year beginning in 1966 and ending in 1967, the entire amount of all net operating loss deductions carried back to the taxable year shall be limited to that portion of taxable income for such taxable year which the number of days in 1967 bears to the total days in the taxable year ending in 1967; and

(C) The computation of any net operating loss deduction for a taxable year covered by this subsection shall require the further modifications stated in paragraphs (3), (4), and (5) of this subsection;

(3) In computing the net operating loss deduction allowed by this subsection, there shall be included in gross income the amount of interest which is excluded from gross income by subsection (a), decreased by the amount of interest paid or accrued which is disallowed as a deduction by subsection (e). In determining the amount of the net operating loss deduction under this subsection of any corporation, there shall be disregarded the net operating loss of such corporation for any taxable year for which the corporation is an electing small business corporation;

(4) No net operating loss carryback or carryover shall be allowed by this chapter if not allowed under section 172 of the Internal Revenue Code;

(5) The election to relinquish the entire carryback period with respect to a net operating loss allowed under section 172(b)(3)(C) of the Internal Revenue Code shall be operative for the purposes of this chapter; provided that no taxpayer shall make such an election as to a net operating loss of a business where such net operating loss occurred in the taxpayer's business prior to the taxpayer entering business in this State; and

(6) The five-year carryback period for net operating losses for any taxable year ending during 2001 and 2002 in section 172(b)(1)(H) of the Internal Revenue Code shall not be operative for purposes of this chapter.

(e) There shall be disallowed as a deduction the amount of interest paid or accrued within the taxable year on indebtedness incurred or continued, (1) to purchase or carry bonds the interest upon which is excluded from gross income by subsection (a); or (2) to purchase or carry property owned without the State, or to carry on trade or business

without the State, if the taxpayer is a person taxable only upon income from sources in the State.

(f) Losses of property as the result of tidal wave, hurricane, earthquake, or volcanic eruption, or as a result of flood waters overflowing the banks or walls of a river or stream, or from any other natural disaster, to the extent of the amount deductible, under this chapter, not compensated for by insurance or otherwise, may be deducted in the taxable year in which sustained, or at the option of the taxpayer may be deducted in equal installments over a period of five years, the first such year to be the calendar year or fiscal year of the taxpayer in which such loss occurred.

(g) In computing taxable income there shall be allowed as a deduction:

(1) Political contributions by any taxpayer not in excess of \$250 in any year; provided that such contributions are made to a central or county committee of a political party whose candidates shall have qualified by law to be voted for at the immediately previous general election; or

(2) Political contributions by any individual taxpayer in an aggregate amount not to exceed \$1,000 in any year; provided that such contributions are made to candidates as defined in section 11-191, who have agreed to abide by the campaign expenditure limits as set forth in section 11-209; and provided further that not more than \$250 of an individual's total contribution to any single candidate shall be deductible for purposes of this section. [L Sp 1957, c 1, pt of §2; am L 1959, c 276, §2 and c 277, §8(a); am L Sp 1959 1st, c 29, §8; am L 1963, c 26, §1, c 47, §1, c 91, §2, and c 146, §4; am L 1965, c 155, §31(a) and c 201, §5; Supp, §121-5; am L 1967, c 32, §1; HRS §235-7; am L 1968, c 18, §2; am L 1969, c 152, §1; am L 1970, c 180, §1; am L 1971, c 95, §1; am L 1976, c 156, §6; am L 1978, c 173, §2(7); am L 1979, c 62, §2(6), (7), c 105, §21, and c 224, §3; am L 1981, c 185, §1 and c 209, §2; am L 1982, c 25, §2; am L 1983, c 124, §16; gen ch 1985; am L 1987, c 39, §3 and c 239, §1(7), (8); am L 1990, c 340, §2; am L 1992, c 103, §1; am L 1993, c 337, §5; am L Sp 1995, c 10, §3; am L 2003, c 172, §4; am L 2004, c 197, §2]

Attorney General Opinions

Federal home loan banks, not being national banks, dividends received therefrom are taxable. Att. Gen. Op. 65-8.

Case Notes

Depreciation not actually sustained during year, not deductible. 18 H. 15.

No federal or territorial inhibition against imposition of tax upon income accruing prior to enactment. 33 H. 766.

Insurance premiums on life of president not an actual business expense. 36 H. 11.

Cited: 18 H. 530; 18 H. 596; 34 H. 515, 583.

§235-102.5 Income check-off authorized. (a) Any individual whose state income tax liability for any taxable year is \$2 or more may designate \$2 of the liability to be paid over to the Hawaii election campaign fund, any other law to the contrary notwithstanding, when submitting a state income tax return to the department. In the case of a joint return of a husband and wife having a state income tax liability of \$4 or more, each spouse may designate that \$2 be paid to the fund. The director of taxation shall revise the individual state income tax form to allow the designation of contributions to the fund on the face of the tax return and immediately above the signature lines. An explanation shall be included which clearly states that the check-off does not constitute an additional tax liability. If no designation was made on the original tax return when filed, a designation may be made by the individual on an amended return filed within twenty months and ten days after the due date for the original return for such taxable year. A designation once made whether by an original or amended return may not be revoked.

(b) Notwithstanding any law to the contrary, any individual whose state income tax refund for any taxable year is \$2 or more may designate \$2 of the refund to be deposited into the school-level minor repairs and maintenance special fund established by section 302A-1504.5, when submitting a state income tax return to the department. In the case of a joint return of a husband and wife having a state income tax refund of \$4 or more, each spouse may designate that \$2 be deposited into the special fund. The director of taxation shall revise the individual state income tax return form to allow the designation of contributions to the special fund on the face of the tax return and immediately above the signature lines. If no designation was made on the original tax return when filed, a designation may be made by the individual on an amended return filed within twenty months and ten days after the due date for the original return for such taxable year. A designation once made, whether by an original or amended return, may not be revoked.

(c) Notwithstanding any law to the contrary, any individual whose state income tax refund for any taxable year is \$2 or more may designate \$2 of the refund to be paid over to the libraries special fund established by section 312-3.6, when submitting a state income tax return to the department. In the case of a joint return of a husband and wife having a state income tax refund of \$4 or more, each spouse may designate that \$2 be deposited into the special fund. The director of taxation shall revise the individual state income tax form to allow the designation of contributions to the fund on the face of the

tax return and immediately above the signature lines. If no designation was made on the original tax return when filed, a designation may be made by the individual on an amended return filed within twenty months and ten days after the due date for the original return for such taxable year. A designation once made, whether by an original or amended return, may not be revoked.

(d) Notwithstanding any law to the contrary, any individual whose state income tax refund for any taxable year is \$5 or more may designate \$5 of the refund to be paid over as follows:

(1) One-third to the Hawaii children's trust fund under section 350B-2; and

(2) Two-thirds to be divided equally among:

(A) The domestic violence and sexual assault special fund under the department of health in section 321-1.3;

(B) The spouse and child abuse special account under the department of human services in section 346-7.5; and

(C) The spouse and child abuse special account under the judiciary in section 601-3.6.

When designated by a taxpayer submitting a state income tax return to the department, the department of budget and finance shall allocate the moneys among the several funds as provided in this subsection. In the case of a joint return of a husband and wife having a state income tax refund of \$10 or more, each spouse may designate that \$5 be paid over as provided in this subsection. The director of taxation shall revise the individual state income tax form to allow the designation of contributions pursuant to this subsection on the face of the tax return and immediately above the signature lines. If no designation was made on the original tax return when filed, a designation may be made by the individual on an amended return filed within twenty months and ten days after the due date for the original return for such taxable year. A designation once made, whether by an original or amended return, may not be revoked. [L 1979, c 224, §4; am L 1991, c 112, §1; am L 2001, c 311, §3; am L 2002, c 16, §9; am L 2003, c 193, §2; am L 2004, c 228, §1; am L 2005, c 142, §1]

§235-102.5 Income check-off authorized. (a) Any individual whose state income tax liability for any taxable year is \$2 or more may designate \$2 of the liability to be paid over to the Hawaii election campaign fund, any other law to the contrary notwithstanding, when submitting a state income tax return to the department. In the case of a joint return of a husband and wife having a state income tax liability of \$4 or more, each spouse may designate that \$2 be paid to the fund. The director of taxation shall revise the individual state income tax form to allow the designation of contributions to

the fund on the face of the tax return and immediately above the signature lines. An explanation shall be included which clearly states that the check-off does not constitute an additional tax liability. If no designation was made on the original tax return when filed, a designation may be made by the individual on an amended return filed within twenty months and ten days after the due date for the original return for such taxable year. A designation once made whether by an original or amended return may not be revoked.

(b) Notwithstanding any law to the contrary, any individual whose state income tax refund for any taxable year is \$2 or more may designate \$2 of the refund to be deposited into the school-level minor repairs and maintenance special fund established by section 302A-1504.5, when submitting a state income tax return to the department. In the case of a joint return of a husband and wife having a state income tax refund of \$4 or more, each spouse may designate that \$2 be deposited into the special fund. The director of taxation shall revise the individual state income tax return form to allow the designation of contributions to the special fund on the face of the tax return and immediately above the signature lines. If no designation was made on the original tax return when filed, a designation may be made by the individual on an amended return filed within twenty months and ten days after the due date for the original return for such taxable year. A designation once made, whether by an original or amended return, may not be revoked.

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(A) The domestic violence and sexual assault special fund under the department of health in section 321-1.3;

(B) The spouse and child abuse special account under the department of human services in section 346-7.5; and

(C) The spouse and child abuse special account under the judiciary in section 601-3.6.

When designated by a taxpayer submitting a state income tax return to the department, the department of budget and finance shall allocate the moneys among the several funds as provided in this subsection. In the case of a joint return of a husband and wife having a state income tax refund of \$10 or more, each spouse may designate that \$5 be paid over as provided in this subsection. The director of taxation shall revise the individual state income tax form to allow the designation of contributions pursuant to this subsection on the face of the tax return and immediately above the signature lines. If no designation was made on the original tax return when filed, a designation may be made by the individual on an amended return filed within twenty months and ten days after the due date for the original return for such taxable year. A designation once made, whether by an original or amended return, may not be revoked. [L 1979, c 224, §4; am L 1991, c 112, §1; am L 2001, c 311, §3; am L 2002, c 16, §9; am L 2003, c 193, §2; am L 2004, c 228, §1; am L 2005, c 142, §1]

§237-24.7 Additional amounts not taxable. In addition to the amounts not taxable under section 237-24, this chapter shall not apply to:

(1) Amounts received by the operator of a hotel from the owner of the hotel in amounts equal to and which are disbursed by the operator for employee wages, salaries, payroll taxes, insurance premiums, and benefits, including retirement, vacation, sick pay, and health benefits. As used in this paragraph:

"Employee" means employees directly engaged in the day-to-day operation of the hotel and employed by the operator.

"Hotel" means an operation as defined in section 445-90.

"Operator" means any person who, pursuant to a written contract with the owner of a hotel, operates or manages the hotel for the owner.

"Owner" means the fee owner or lessee under a recorded lease of a hotel;

(2) Amounts received by the operator of a county transportation system operated under an operating contract with a political subdivision, where the political subdivision is the owner of the county transportation system. As used in this paragraph:

"County transportation system" means a mass transit system of motorized buses providing regularly scheduled transportation within a county.

"Operating contract" or "contract" means a contract to operate and manage a political subdivision's county transportation system, which provides that:

(A) The political subdivision shall exercise substantial control over all aspects of the operator's operation;

(B) The political subdivision controls the development of transit policy, service planning, routes, and fares; and

(C) The operator develops in advance a draft budget in the same format as prescribed for agencies of the political subdivision. The budget must be subject to the same constraints and controls regarding the lawful expenditure of public funds as any public sector agency, and deviations from the budget must be subject to approval by the appropriate political subdivision officials involved in the budgetary process.

"Operator" means any person who, pursuant to an operating contract with a political subdivision, operates or manages a county transportation system.

"Owner" means a political subdivision that owns or is the lessee of all the properties and facilities of the county transportation system (including buses, real estate, parking garages, fuel pumps, maintenance equipment, office supplies, etc.), and that owns all revenues derived therefrom;

(3) Surcharge taxes on rental motor vehicles imposed by chapter 251 and passed on and collected by persons holding certificates of registration under that chapter;

(4) Amounts received by the operator of orchard properties from the owner of the orchard property in amounts equal to and which are disbursed by the operator for employee wages, salaries, payroll taxes, insurance premiums, and benefits, including retirement, vacation, sick pay, and health benefits. As used in this paragraph:

"Employee" means an employee directly engaged in the day-to-day operations of the orchard properties and employed by the operator.

"Operator" means a producer who, pursuant to a written contract with the owner of the orchard property, operates or manages the orchard property for the owner where the property contains an area sufficient to make the undertaking economically feasible.

"Orchard property" means any real property that is used to raise trees with a production life cycle of fifteen years or more producing fruits or nuts having a normal period of development from the initial planting to the first commercially saleable harvest of not less than three years.

"Owner" means a fee owner or lessee under a recorded lease of orchard property;

(5) Taxes on nursing facility income imposed by chapter 346E and passed on and collected by operators of nursing facilities;

(6) Amounts received under property and casualty insurance policies for damage or loss of inventory used in the conduct of a trade or business located within the State or a portion thereof that is declared a natural disaster area by the governor pursuant to section 209-2;

(7) Amounts received as compensation by community organizations, school booster clubs, and nonprofit organizations under a contract with the chief election officer for the provision and compensation of precinct officials and other election-related personnel, services, and activities, pursuant to section 11-5;

(8) Interest received by a person domiciled outside the State from a trust company (as defined in section 412:8-101) acting as payment agent or trustee on behalf of the issuer or payees of an interest bearing instrument or obligation, if the interest would not have been subject to tax under this chapter if paid directly to the person domiciled outside the State without the use of a paying agent or trustee; provided that if the interest would otherwise be taxable under this chapter if paid directly to the person domiciled outside the State, it shall not be exempt solely because of the use of a Hawaii trust company as a paying agent or trustee;

(9) Amounts received by a management company from related entities engaged in the business of selling interstate or foreign common carrier telecommunications services in amounts equal to and which are disbursed by the management company for employee wages, salaries, payroll taxes, insurance premiums, and benefits, including retirement, vacation, sick pay, and health benefits. As used in this paragraph:

"Employee" means employees directly engaged in the day-to-day operation of related entities engaged in the business of selling interstate or foreign common carrier telecommunications services and employed by the management company.

"Management company" means any person who, pursuant to a written contract with a related entity engaged in the business of selling interstate or foreign common carrier telecommunications services, provides managerial or operational services to that entity.

"Related entities" means:

(A) An affiliated group of corporations within the meaning of section 1504 (with respect to affiliated group defined) of the federal Internal Revenue Code of 1986, as amended;

(B) A controlled group of corporations within the meaning of section 1563 (with respect to definitions and special rules) of the federal Internal Revenue Code of 1986, as amended;

(C) Those entities connected through ownership of at least eighty per cent of the total value and at least eighty per cent of the total voting power of each such entity (or combination thereof), including partnerships, associations, trusts, S corporations, nonprofit corporations, limited liability partnerships, or limited liability companies; and

(D) Any group or combination of the entities described in paragraph (C) constituting a unitary business for income tax purposes;

whether or not the entity is located within or without the State or licensed under this chapter; and

(10) Amounts received as grants under section 206M-15. [L 1989, c 351, §1; am L 1991, c 229, §1 and c 263, §10; am L 1992, c 252, §1; am L 1993, c 129, §§2, 4 and c 315, §2; am L 1994, c 230, §§2, 4; am L 1995, c 11, §16, c 71, §4, and c 133, §1; am L 1998, c 214, §2 and c 245, §2; am L 1999, c 165, §2; am L 2001, c 35, §3]

Cross References

Qualified improvement tax credit, see chapter 235D.

§264-6 State highway not to be disturbed without permit. No person or government agency, whether federal, state, or county, shall, in any manner or for any purpose do any of the following acts without a written permit from the director of transportation or the director's authorized representative:

(1) Break up, dig up, disturb, undermine or dig under, or cause to be broken up, dug up, disturbed, undermined, or dug under, the right-of-way of any state highway; or

(2) Place, erect, leave, or store any structure, motor or other vehicle, equipment, or any other object wholly or partially within the right-of-way of any state highway; provided that this paragraph shall not apply to the holding or displaying of movable signs, for the purpose of carrying on political campaign activities. [L 1967, c 163, pt of §2; HRS §264-6; am L 1980, c 146, §1; gen ch 1985]

§286-108 Examination of applicants. (a) Except as provided in section 286-107.5(a), the examiner of drivers shall examine every applicant for a driver's license, except as otherwise provided in this part. The examination shall include a test of:

(1) The applicant's eyesight and any further physical examination that the examiner of drivers finds necessary to determine the applicant's fitness to operate a motor vehicle safely upon the highways;

(2) The applicant's ability to understand highway signs regulating, warning, and directing traffic;

(3) The applicant's knowledge of the rules of the road based on the traffic laws of the State and the traffic ordinances of the county where the applicant resides or intends to operate a motor vehicle; and

(4) The actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle.

The examinations shall be appropriate to the operation of the category of motor vehicle for which the applicant seeks to be licensed and shall be conducted as required by the director.

The examiner of drivers shall require every applicant to comply with section 286-102.5.

The examiner of drivers may waive the actual demonstration of ability to operate a motorcycle or motor scooter for any person who furnishes evidence, to the satisfaction of the examiner of drivers, that the person has completed the motorcycle education course approved by the director in accordance with section 431:10G-104.

At the time of examination, an application for voter registration by mail shall be made available to every applicant for a driver's license.

For the purposes of this section, the term "applicant" does not include any person reactivating a license under section 286-107.5(a).

(b) *[Repeal and reenactment on January 9, 2011. L 2005, c 72, §15.]* The examiner of drivers shall require proof from every applicant under the age of eighteen that the applicant has completed a driver education program and a behind-the-wheel driver training course certified by the director of transportation. The examiner of drivers shall not examine any applicant for a provisional license who is sixteen through seventeen years of age unless the applicant holds and has held a valid instruction permit under section 286-110, for a period of no fewer than one hundred eighty days. If the applicant's instruction permit has expired and a new instruction permit was issued within thirty days of its expiration, the examiner of drivers may examine the applicant without requiring an additional one hundred eighty day period.

(c) The examiner of drivers may waive the actual demonstration of ability to operate a motor vehicle for any person who is at least eighteen years of age and who possesses a valid driver's license issued to the applicant in any other state of the United States, the

District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, a province of the Dominion of Canada, or the Commonwealth of the Northern Mariana Islands for the operation of vehicles in categories 1 through 3 of section 286-102.

(d) As part of the examination required by this section, the applicant for a driver's license shall produce and display a valid motor vehicle or liability insurance identification card for the motor vehicle required by sections 431:10C-107 and 431:10G-106, when the applicant demonstrates the ability to operate a motor vehicle to the satisfaction of the examiner of drivers. If no valid motor vehicle or liability insurance identification card is displayed, the examiner of drivers shall not issue a driver's license to the applicant. [L 1937, c 234, §11; RL 1945, §7312; RL 1955, §160-42; am L 1967, c 214, §9; HRS §286-108; am L 1975, c 194, §3; am L Sp 1977 1st, c 20, §12; am L 1978, c 91, §11; am L 1985, c 26, §1; am L 1986, c 224, §1; am L 1990, c 45, §10; am L 1991, c 60, §1; am L 1997, c 104, §1, c 251, §7, c 269, §1, and c 330, §5; am L 1999, c 175, §2; am L 2001, c 86, §5; am L 2002, c 4, §1; am L 2005, c 72, §5]

Cross References

Statewide driver education program and behind-the-wheel driver training program; rules, see §286-108.4.

§291C-77 Pedestrians soliciting rides, business or attention of motorist. (a) Except as otherwise provided by county ordinance, no person shall stand in, walk along, or otherwise occupy a portion of a highway for the purpose of soliciting a ride, employment, business, or contributions from the occupant of any vehicle.

(b) No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway.

(c) Except as otherwise provided by county ordinance, no person shall hold or display a movable sign within the right-of-way boundaries of a public highway or on the sidewalk abutting a public highway or in an area adjacent to the highway for the purpose of carrying on political campaign activities as defined in section 19-6(7) and which seek to draw the attention of occupants of motor vehicles using the highway. A movable sign is any portable device, display, emblem, billboard, notice, picture, painting or writing, other than official signs placed or required by the state or county. [L 1971, c 150, pt of §1; am L 1973, c 216, §2]

Attorney General Opinions

Subsection (a) is not unconstitutionally vague. Att. Gen. Op. 75-17.

Case Notes

Subsection (c) violates First Amendment freedom of speech. 516 F.2d 892.

PART IV. OUTDOOR ADVERTISING

Note

Sections 445-111 to 121 designated as Part IV by L 1990, c 164, §28.

§445-111 Definitions. As used in this chapter:

(1) "Outdoor advertising device" means any device which is:

(A) A writing, picture, painting, light, model, display, emblem, sign, or similar device situated outdoors, which is so designed that it draws the attention of persons in any public highway, park, or other public place to any property, services, entertainment, or amusement, bought, sold, rented, hired, offered, or otherwise traded in by any person, or to the place or person where or by whom such buying, selling, renting, hiring, offering, or other trading is carried on;

(B) A sign, poster, notice, bill, or word or words in writing situated outdoors and so designed that it draws the attention of and is read by persons in any public highway, park, or other public place; or

(C) A sign, writing, symbol, or emblem made of lights, or a device or design made of lights so designed that its primary function is not giving light, which is situated

outdoors and draws the attention of persons in any public highway, park or other public place.

(2) "Billboard" is any board, fence, or similar structure, whether free-standing or supported by or placed against any wall or structure, which is designed or used for the principal purpose of having outdoor advertising devices placed, posted, or fastened upon it.

(3) Any person who, by oneself or through any agent or independent contractor, maintains or displays any outdoor advertising device, or any person who knowingly causes any outdoor advertising device advertising the person's products, merchandise, or services to be displayed by oneself or any agent or independent contractor; or any person who, being in possession of any land, building, or part of a building, permits any outdoor advertising device on the land, building, or part of a building, shall be deemed to be displaying an outdoor advertising device.

(4) Any person, who, by oneself or through any agent or independent contractor, erects or maintains a billboard or places any outdoor advertising device upon a billboard, or any person who knowingly causes any of the person's products, merchandise, or services to be advertised upon a billboard by oneself or through any agent or independent contractor; or any person who, being in possession of any land, building, or part of a building, knowingly permits a billboard to be erected or to remain on the land, building, or part of a building, shall be deemed to be maintaining a billboard. [L 1965, c 233, pt of §1; Supp, §155-120; HRS §445-111; gen ch 1985]

§445-112 Where and when permitted. No person shall erect, maintain, or use a billboard or display any outdoor advertising device, except as provided in this section:

(1) The display of official notices and signs, posted by order of any court or public office, or posted by any public officer in the performance of a public duty, or posted by any person required to do so by any law or rule having the force of law;

(2) Any outdoor advertising device announcing a meeting or series of meetings is not prohibited by this section if displayed on the premises where the meeting or series of meetings will be or is being held. Meeting, as used in this section, includes all meetings regardless of whether open to the public or conducted for profit and includes but is not limited to sports events, conventions, fairs, rallies, plays, lectures, concerts, motion pictures, dances, and religious services;

(3) Any outdoor advertising device indicating that the building or premises on which it is displayed is the residence, office, or place of business, commercial or otherwise, of any individual, partnership, joint venture, association, club, or corporation, and stating the nature of the business;

(4) Any outdoor advertising device that advertises property or services that may be bought, rented, sold, or otherwise traded in on the premises or in the building on which the outdoor advertising device is displayed;

(5) The offering for sale of merchandise bearing incidental advertising, including books, magazines, and newspapers, in any store, newsstand, vending machine, rack, or other place where such merchandise is regularly sold;

(6) Any outdoor advertising device offering any land, building, or part of a building for sale or rent, if displayed on the property so offered or on the building so offered;

(7) Any outdoor advertising device carried by persons or placed upon vehicles used for the transportation of persons or goods, except as provided under section 445-112.5, relating to vehicular advertising devices;

(8) Any outdoor advertising device warning the public of dangerous conditions that they may encounter in nearby sections of streets, roads, paths, public places, power lines, gas and water mains, or other public utilities;

(9) Signs serving no commercial purpose that indicate places of natural beauty, or of historical or cultural interest and that are made according to designs approved by the department of business, economic development, and tourism;

(10) Any outdoor advertising device or billboard erected, placed, or maintained upon a state office building, if erected, placed, or maintained by authority of a state agency, department, or officer for the sole purpose of announcing cultural or educational events within the State, and if the design and location thereof has been approved by the department of business, economic development, and tourism;

(11) Signs urging voters to vote for or against any person or issue, may be erected, maintained, and used, except where contrary to or prohibited by law;

(12) Signs stating that a residence that is offered for sale, lease, or rent is open for inspection at the actual time the sign is displayed and showing the route to the residence; provided that the sign contains no words or designs other than the words "Open House", the address of the residence, the name of the person or agency responsible for the sale, and an arrow or other directional symbol and is removed during such time as the residence is not open for inspection;

(13) The erection, maintenance, and use of billboards if the billboard is used solely for outdoor advertising devices not prohibited by this section;

(14) The continued display and maintenance of outdoor advertising devices actually displayed on July 8, 1965, in accordance with all laws and ordinances immediately theretofore in effect;

(15) The continued maintenance of any billboard actually maintained on July 8, 1965, and the display thereon of the same or new advertising devices, all in accordance with all laws and ordinances in effect immediately prior to July 9, 1965;

(16) Any outdoor advertising device displayed with the authorization of the University of Hawaii on any scoreboard of any stadium owned by the university. An outdoor advertising device displayed under this paragraph shall be on the front of the scoreboard and face the interior of the stadium;

(17) Any temporary outdoor advertising device attached to or supported by the structure of any stadium owned by the University of Hawaii, located within and facing the interior of the stadium, and authorized to be displayed by the university. For the purpose of this paragraph, "temporary" means displayed for a short period before the official start of organized athletic competition, during the organized athletic competition, and for a short period after the official end of the organized athletic competition; and

(18) Any outdoor advertising device displayed with the authorization of the stadium authority on any scoreboard of any stadium operated by the stadium authority. An outdoor advertising device displayed under this paragraph shall be on the front of the scoreboard and face the interior of the stadium. [L 1965, c 233, pt of §1; Supp, §155-121; HRS §445-112; am L 1986, c 245, §1; am L 1987, c 336, §7; am L 1990, c 293, §8; am L 1994, c 118, §1; am L 2003, c 194, §4; am L 2006, c 222, 3]

Attorney General Opinions

Paragraph (11) (prior to 2003 amendment), regulating political signs, was unconstitutional and unenforceable. Att. Gen. Op. 96-4.

§445-113 Regulation by counties. Except for outdoor advertising devices authorized under section 445-112(16) and (17), the several counties may adopt ordinances regulating billboards and outdoor advertising devices not prohibited by sections 445-111 to 445-121. The ordinances may:

(1) Classify billboards and outdoor advertising devices in the classes set forth in section 445-112, or in any other reasonable manner of classification;

(2) Regulate the size, manner of construction, color, illumination, location, and appearance of any class of billboard or outdoor advertising device;

(3) Prohibit the erection or maintenance of any type of billboard or the displaying of any outdoor advertising device in particular parts, or in all parts, of the county; provided that the prohibition shall not apply to any official notice or sign described in section 445-112(1); and provided further that, unless a county ordinance specifies otherwise, the prohibition shall extend to billboards or outdoor advertising devices located in the airspace or waters beyond the boundaries of the county that are visible from any public highway, park, or other public place located within the county;

(4) Control and license the business of making, erecting, posting, renting, and maintaining outdoor advertising devices and billboards as a business providing advertising for others, and require each person engaging in such business to obtain an annual license, the fee for which shall not exceed \$100. The license shall be conditioned upon the maintenance of all outdoor advertising devices and billboards in a safe state, and the observance of sections 445-111 to 445-121 and all applicable ordinances and shall be revocable by the licensing authority upon breach of such condition;

(5) Require that no person, whether licensed under paragraph (4) or not, shall erect or maintain any billboard unless it is licensed by a permit issued by the county, the issuance of which permit shall be conditioned upon compliance with this chapter and all applicable ordinances and the payment to the county of an annual fee not to exceed \$25 per billboard; and

(6) Provide for such other regulation of billboards and outdoor advertising devices as will promote the public health, welfare, safety, and convenience; encourage and promote the tourist and visitor trade; conserve and develop the natural beauty of the State, as well as objects and places of historic and cultural interest; foster sightliness and physical good order; and promote the purposes and provisions of sections 445-111 to 445-121. [L 1965, c 233, pt of §1; Supp, §155-122; HRS §445-113; am L 1986, c 245, §2; am L 2005, c 188, §1]

§445-114 Unlawful posting in public places. Except for a public officer in performance of a public duty, or a private person in giving legal notice on other than utility poles, it shall be unlawful for any person to paste, post, paint, print, nail, tack, or otherwise fasten any card, banner, handbill, sign, poster, outdoor advertising device, or notice of any kind or cause the same to be done, on any curbstone, lamppost, utility pole, streetlight pole, hydrant, bridge, tree, street sign, traffic sign, or traffic light upon any public property in the State, except as may be required by the ordinances of the county where it is posted, or by the laws of this State or of the United States. [L 1965, c 233, pt of §1; Supp, §155-123; HRS §445-114; am L 1998, c 181, §1]

Revision Note

Subsection designation deleted pursuant to §23G-15(1).

§831-1 Definition. In this chapter, "felony" means an offense that is punishable with imprisonment for a term which is in excess of one year. [L 1969, c 250, pt of §1; HRS §716-1; ren L 1972, c 9, pt of §1; am L 1975, c 14, §1]

§831-2 Rights lost. (a) A person sentenced for a felony, from the time of the person's sentence until the person's final discharge, may not:

(1) Vote in an election, but if the defendant is placed on probation or the defendant is paroled after commitment to imprisonment, the defendant may vote during the period of the probation or parole; or

(2) Become a candidate for or hold public office.

(b) A public office held at the time of conviction is forfeited as of the date of the conviction, if the conviction is in this State, or, if the conviction is in another state or in a federal court, as of the date a certification of the conviction from the trial court is filed in the office of the lieutenant governor who shall receive and file it as a public document. An appeal or other proceeding taken to set aside or otherwise nullify the conviction or sentence does not affect the application of this section.

For purposes of this section:

"Public office" means an office held by an elected official, department heads, officers, and members of any board, commission, or other state agency whose appointments are made by the governor, chief justice, office of Hawaiian affairs, or the judicial selection commission, or are required by law to be confirmed by the senate.

"Time of conviction" means the day upon which the person was found guilty of the charges by the trier of fact or determined to be guilty by the court.

(c) Subsections (a) and (b) of this section and any other laws to the contrary notwithstanding, any person convicted of any act, attempt, or conspiracy to overthrow the state or the federal government by force or violence shall not hold any public office or employment. [L 1969, c 250, pt of §1; HRS §716-2; ren L 1972, c 9, pt of §1; am L 1979, c 53, §2; gen ch 1985; am L 2002, c 171, §2; am L 2003, c 150, §3; am L 2006, c 253, §3]

Attorney General Opinions

OHA trustees are holders of "public office". Att. Gen. Op. 84-3.

§831-3 Rights retained by convicted person. Except as otherwise provided by law, a person convicted of a crime does not suffer civil death or corruption of blood or sustain loss of civil rights or forfeiture of estate or property, but retains all of the person's rights, political, personal, civil, and otherwise, including the right to hold public office or employment, to vote, to hold, receive, and transfer property, to enter into contracts, to sue and be sued, and to hold offices of private trust in accordance with law. [L 1969, c 250, pt of §1; HRS §716-3; ren L 1972, c 9, pt of §1; gen ch 1985; am L 1986, c 155, §2; am L 2003, c 95, §16(1)]

Case Notes

Felon can be employed as a state correction officer and can carry a gun. 402 F. Supp. 84.

§831-3.1 Prior convictions; criminal records; noncriminal standards. (a) A person shall not be disqualified from public office or employment by the State or any of its branches, political subdivisions, or agencies except under section 831-2(c), or be disqualified to practice, pursue, or engage in any occupation, trade, vocation, profession, or business for which a permit, license, registration, or certificate is required by the State or any of its branches, political subdivisions, or agencies, solely by reason of a prior conviction of a crime; provided that:

(1) With respect to liquor licenses, a person who has been convicted of a felony may be denied a liquor license by the liquor commission; and

(2) A person who within the past ten years, excluding any period of incarceration, has been convicted of a crime that bears a rational relationship to the duties and responsibilities of a job, occupation, trade, vocation, profession, or business may be denied employment, a permit, license, registration, or certificate. Nothing in this subsection shall abrogate any applicable appeal rights under chapters 76 or 89.

(b) The State or any of its branches, political subdivisions, or agencies may consider as a justification for the refusal, suspension, or revocation of any employment or of any permit, license, registration, or certificate, any conviction of any crime, except those which have been expunged, occurring within the past ten years, excluding any period of incarceration, when that crime bears a rational relationship to the duties and

responsibilities of the job, occupation, trade, vocation, profession, or business for which a permit, license, registration, or certificate is applied for or held.

(c) The State or any of its branches, political subdivisions, or agencies may consider as a possible justification for the refusal, suspension, or revocation of any employment or of any permit, license, registration, or certificate, any conviction of a crime, not occurring within the past ten years, excluding any period of incarceration, except those which have been expunged, when the offense directly relates to:

(1) The applicant's possible performance in the job applied for;

(2) The employee's possible performance in the job that the employee holds; or

(3) The applicant's or holder's possible performance in the occupation, trade, vocation, profession, or business for which a permit, license, registration, or certificate is applied for or held.

For the purpose of this subsection, such refusal, suspension, or revocation may occur only when the agency determines, after investigation in accordance with chapter 91, or in the case of employment in the civil service, after appropriate investigation, notification of results and planned action, and opportunity to meet and rebut the finding, all of which need not be conducted in accordance with chapter 91, that the person so convicted has not been sufficiently rehabilitated to warrant the public trust.

(d) When considering noncriminal standards in the granting, renewal, suspension, or revocation of any employment or any such permit, license, registration, or certificate, the State or any of its branches, political subdivisions, or agencies shall not take into consideration the conviction of any crime except as provided by subsections (b) and (c).

(e) A person who applies for a position in the civil service and is denied employment in that position on the basis of a criminal conviction pursuant to this section, may appeal the adverse decision to the civil service commission or merit appeals board, as appropriate, within twenty days after the notice of action has been sent to the person.

(f) Notwithstanding any law to the contrary, this section shall not apply to:

(1) Denials by the department of human services, the department of health, or any other branch, political subdivision, or agency of any certificate of approval, license, or permit to any organization, institution, home, or facility subject to licensure under chapters 321, 333F, and 346;

(2) Denials of employment as a staff member of a youth correctional facility operated under chapter 352;

(3) Denials of employment as an employee of a detention or shelter facility established or designated pursuant to section 571-33;

(4) Denials of employment as a staff member of a correctional facility pursuant to chapter 353, or as a staff member that requires the exercise of police powers, including the power to arrest, in the performance of the staff member's duties pursuant to chapter 353C; and

(5) Denials of employment of applicants or employees pursuant to section 78-2.7. [L 1974, c 205, §2; am L 1975, c 54, §1; am L 1976, c 113, §2; am L 1979, c 53, §3; am L 1985, c 155, §3 and c 209, §8; gen ch 1985; am L 1987, c 339, §4; am L 1989, c 74, §2 and c 116, §1; am L 1993, c 40, §2; am L 2003, c 95, §16(2)]

Cross References

Employer inquiries into conviction record, see §378-2.5.

Attorney General Opinions

Discussion of types of questions which may be asked by various boards and commissions of persons applying for a new or renewed license or certificate. Att. Gen. Op. 89-1.

Case Notes

Cited: 10 H. App. 220, 864 P.2d 1109.